IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA and SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL Plaintiffs, v. INVISTA S.à r.l. Defendant.	Civil Action No. _____ Judge _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the South Carolina Department of Health and Environmental Control (SCDHEC) jointly allege the following:

NATURE OF ACTION

1. This is a civil action for civil penalties and injunctive relief brought against INVISTA S.à r.l. ("INVISTA") for violations of the following environmental statutes and their implementing regulations: the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11001 to 11050; the Clean Water Act (CWA), 42 U.S.C. §§ 1251 to 1387; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 to 136y; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603(a); the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f to 300j and the

Clean Air Act (CAA), 42 U.S.C. §§ 7410 to 7671q; and the requirements adopted as part of the applicable State Implementation Plans (SIPs) at its facilities located at Athens, GA; Calhoun, GA; Camden, SC; Chattanooga, TN; Dalton, GA; Kinston, NC; LaPorte, TX; Martinsville, VA; Orange, TX, Seaford, DE; Victoria, TX; and Waynesboro, VA (hereinafter "Acquired Facilities").

JURISDICTION AND VENUE

2. This Court shall have jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334, 1345, 1355 and 1367; Sections 113, 167 and 304(b)(1)(B) of the CAA, as amended, 42 U.S.C. §§ 7413, 7477 and 7604(b)(1)(B); Sections 309 and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319, 1321(b)(7)(E); Section 325(c)(4) of the EPCRA, 42 U.S.C. § 11045(c)(4); Sections 16 and 27(a) of FIFRA, 7 U.S.C. § 136n and 136s-2(a); Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c), 9613(b); Sections 1414(b) and 1423(b) of the SDWA, 42 U.S.C. §§ 300g-3(b), 300h-2(b); and Sections 3008(a) and 9006 of RCRA, 42 U.S.C. §§ 6928(a), 6991(e). The Complaint states a claim upon which relief may be granted for injunctive relief and civil penalties against INVISTA.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1395(a); CAA § 113(b), 42 U.S.C. § 7413(b); FIFRA § 16, 7 U.S.C. § 136n; CWA §§ 309, 311(b)(7)(E), 33 U.S.C. §§ 1319, 1321(b)(7)(E); EPCRA § 325(a)-(c), 42 U.S.C. § 11045(a)-(c); CERCLA §§ 109(c), 113(b), 42 U.S.C. §§ 9609(c), 9613(b); and RCRA §§ 3008(a), 9006, 42 U.S.C. §§ 6928(a), 6991(e).

NOTICE

4. Pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); Section

113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Section 1413(a)(2)(B) of the SDWA, 42 U.S.C. § 300g-2(a)(2)(B); and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of commencement of this action has been given to the State of Tennessee, the Commonwealth of Virginia, the State of Texas, the State of Georgia and the State of North Carolina.

5. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), notice of the violations of the Delaware, South Carolina, Tennessee and Texas SIPs that are alleged in this complaint have been given to the States or the authorized applicable regulatory agencies of Delaware, South Carolina, Tennessee and Texas and INVISTA at least 30 days prior to the filing of this complaint.

6. Pursuant to Section 27(a) of FIFRA, 42 U.S.C. § 136w-2, notice of the violations has been given to the State of Texas and no enforcement action has been taken within 30 days prior to filing of this complaint.

DEFENDANT

7. INVISTA is a privately-owned integrated fibers and polymers company registered as a foreign limited liability company in the State of Delaware and headquartered in Wichita, Kansas. INVISTA is a person, as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), Section 2(s) of FIFRA, 7 U.S.C. § 136(s), Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 1410(12) of SDWA, 42 U.S.C. § 300f(12). INVISTA is an "owner or operator" of the Acquired Facilities within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b), or Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8. INVISTA is the current owner and operator of the following INVISTA facilities

located in: Athens, GA; Calhoun, GA; Camden, SC; Chattanooga, TN; Dalton, GA; LaPorte, TX; Martinsville, VA; Orange, TX, Seaford, DE; Victoria, TX; Waynesboro, VA. INVISTA is the former owner of a facility located in Kinston, NC.

STATUTORY AND REGULATORY BACKGROUND

CLEAN AIR ACT REQUIREMENTS

9. The Clean Air Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

12. Under Section 107(d) of the CAA, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment"

area; one that does not is classified as a "non-attainment" area.

13. At the times relevant to this Complaint, the Camden Facility located in Camden, South Carolina has been classified as either an attainment area or unclassifiable for nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and ozone.

14. At the times relevant to this Complaint, the Chattanooga Facility located in Chattanooga, Tennessee has been classified as either an attainment area or unclassifiable for NO_2, SO_2, and ozone.

15. At the times relevant to this Complaint, the Seaford Facility located in Seaford, Delaware has been classified as either an attainment area or unclassifiable for NO_2, SO_2, and particular matter (PM-10). The Seaford Facility is located in a nonattainment area for ozone.

16. At the times relevant to this Complaint, the Victoria Facility located in Victoria, Texas has been classified as either an attainment area or unclassifiable for NO_2.

New Source Review and Prevention of Significant Deterioration Requirements

17. Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program."

18. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), prohibits the construction and

subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year (tpy) or more of any air pollutant.

19. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

20. As set forth at 40 C.F.R. § 52.21(i), any major emitting facility in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the CAA. "Net emissions increase" is defined by 40 C.F.R. § 52.21(b)(3)(i) as "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable." A net emissions increase is "significant" if it is equal to or exceeds the rate for that pollutant which is provided in the table at 40 C.F.R. § 52.21(b)(23)(i) (1994). The significance level for nitrogen oxides (NO_x) and SO_2 is 40 tons per year; PM is 25 tons per year.

21. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major

modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant quantities.

22. Section 161 of the CAA, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

23. A state may comply with Section 161 of the CAA either by being delegated the authority by EPA to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

24. Pursuant to PSD regulations, any owner or operator who commences construction or modification of a major source without applying for and receiving approval for such construction or modification is subject to an enforcement action. 40 C.F.R. §§ 52.21, 51.166.

Nonattainment New Source Review

25. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the "Nonattainment NSR" or "NNSR" program. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments, P. Law 101-549, effective November 15, 1990, the NNSR provisions were set forth at 42 U.S.C.

§§ 7501-7508.

26. Under Section 172(c)(5) of the NNSR provisions of the CAA, 42 U.S.C. § 7502(c)(5), each state is required to adopt Nonattainment NSR SIP rules that include provisions to require permits which conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. Section 173 of the CAA, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

27. Section 173(a) of the CAA, 42 U.S.C. § 7503(a), provides that construction and operating permits may be issued if, *inter alia*: (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the national ambient air quality standards is maintained; and (b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate" (LAER).

28. Section 182(f) of the CAA, 42 U.S.C. 7511a(f), enacted as part of the Clean Air Amendments of 1990, sets forth additional requirements to take effect no later than November 15, 1992, regarding the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. Section 182(f) defines NO_x as a pollutant that must be treated as a contributor to the criteria pollutant ozone in an ozone nonattainment area. 42 U.S.C. § 7511a(f). For the purposes of Section 182, a "major stationary source" of NO_x is one that emits or has the potential to emit 100 tons per year or more of a regulated pollutant. 40 C.F.R. § 52.21(b)(1)(i). A "significant" net emissions increase of NO_x is one that would result in increased emissions of 40 tons per year or more. 42 U.S.C. 7511a. 40 C.F.R.

§ 52.24(b)(23)(I).

29. Upon EPA approval, state SIP requirements are federally enforceable under Section 113 of the CAA, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

30. Delaware PSD/NNSR Requirements - At all times relevant to this Complaint, the State of Delaware SIP has included PSD and NNSR provisions approved by EPA, as set forth in Title 7 "Conservation" of the Delaware Code, Chapter 60 and its implementing regulations. Delaware regulations require a major stationary source or modification to meet the PSD permit requirements prior to construction. 7 Del. Code Regs. § 1125.3.7.1 (2005). The Delaware PSD and NNSR regulations are federally enforceable.

31. South Carolina PSD Requirements - At all times relevant to this Complaint, the South Carolina SIP has included PSD regulations approved by EPA, as set forth in South Carolina Regulation 61-62.5, Standard 7. South Carolina Regulation 61-62-5, Standard 7 provides that no construction or operation of a major stationary source or modification of a major stationary source may occur in an area designated as attainment without first obtaining a PSD permit. The South Carolina PSD regulations are federally enforceable.

32. Chattanooga PSD Requirements - At all times relevant to this Complaint, the State of Tennessee SIP has included PSD regulations approved by EPA. Tennessee Air Pollution Control Regulations, Chapter 1200-3-9 requires a major stationary source or modification to meet the PSD permit requirements prior to construction The Chattanooga-Hamilton County Air Pollution Control Board is operating under a certificate of exemption as the delegated authority pursuant to Tennessee Code Annotated, Section 68-201-115. 61 Fed. Reg. 13101 (Mar. 26, 1996). The Tennessee Code provides that a local board may issue and enforce local air pollution

regulations. Under this authority, the CHCAPCB has issued a set of regulations governing PSD requirements that are federally enforceable. Chattanooga City Code § 4-41, Rule 18.

33. Texas PSD Requirements - In 1992 EPA approved Texas' SIP for implementing a PSD program. 57 Fed.Reg. 28093 (June 24, 1992, effective July 24, 1992), 40 C.F.R. §§ 52.2270(c)(73) and 52.2303. The SIP for Texas contains the PSD requirements discussed above in TAC Chapter 116, 40 C.F.R. §§ 52.2270(c) and 52.2299(c). After July 24, 1992, EPA's PSD regulations at 40 C.F.R. § 52.21 were incorporated by reference into the Texas SIP at Section 116.160, and thus, in conjunction with other state PSD requirements, continued to apply in Texas to new major stationary sources and major modifications to existing sources. 40 C.F.R. §§ 52.2270(c) and 52.2299(c)(73), (78) and (102). The Texas PSD requirements are federally enforceable.

34. Pursuant to Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), the violation of any requirement or provision of an applicable implementation plan is a violation of the CAA.

35. Whenever any person has violated, or is in violation of, any requirement or prohibition of any SIP, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring before January 31, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and before March 15, 2004; up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

New Source Performance Standards

36. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

37. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to promulgate regulations establishing federal standards of performance for new source of air pollutants within each of these categories. "New Sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards ("NSPS")

38. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

39. The provisions of 40 C.F.R. Part 60 Subpart J apply to specified "affected facilities," including, *inter alia*, fuel gas combustion devices that commenced construction or modification after June 11, 1973. 40 C.F.R. §§ 60.100(a),(b).

40. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1-60.19, that apply to owners or operators of any stationary source that contains an "affected facility"

subject to regulation under 40 C.F.R. Part 60.

41. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA.

42. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring before January 31, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and before March 15, 2004; up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

Benzene Waste NESHAP

43. The CAA requires EPA to establish emission standards for each "hazardous air pollutant" ("HAP") in accordance with Section 112 of the CAA, 42 U.S.C. § 7412.

44. In March 1990, EPA promulgated national emission standards applicable to benzene-containing waste waters. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61 Subpart FF, (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of the textile production and nylon production processes petroleum product and petroleum waste and is highly volatile. Benzene emissions can be detected anywhere where benzene-containing waste

materials are exposed to the ambient air.

45. Pursuant to the Benzene waste NESHAP, facilities are required to tabulate the total annual benzene ("TAB") content in their wastewater. If the TAB is over 10 Mg per year, the facility is required to elect a control option for control of benzene.

46. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable National Emission Standard for a Hazardous Air Pollutant, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring before January 31, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and before March 15, 2004; up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

Leak Detection and Repair

47. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated New Source Performance Standards for equipment leaks. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated emission standards for hazardous air pollutants ("National Emission Standards for Hazardous Air Pollutants" or "NESHAPs") at 40 C.F.R. Part 61, and NESHAPs for source categories at 40 C.F.R. Part 63. The relevant standards for equipment leaks are found at 40 C.F.R. Part 60, and the relevant source categories are found at 40 C.F.R. Part 60, Subpart Kb (for volatile organic liquid storage vessels), Subpart VV (for volatile organic

chemicals ("VOCs") from the synthetic organic chemicals manufacturing industry), and Subpart KKK (for equipment leaks of VOC from onshore natural gas processing plants). Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated emission standards for hazardous air pollutants ("National Emission Standards for Hazardous Air Pollutants" or "NESHAPs") at 40 C.F.R. Part 61, and the NESHAPs for source categories at 40 C.F.R. Part 63. The relevant NESHAPs are found at 40 C.F.R. Part 61, Subpart J (for equipment leaks of benzene), Subpart Kb (for volatile organic liquid storage vessels), and Subpart V (for equipment leaks); and 40 C.F.R. Part 63, Subpart F (for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry), Subpart G (for process vents, storage vessels, transfer operations, and wastewater), and Subpart H (for organic hazardous air pollutants for equipment leaks.

48. The focus of the LDAR program is the facility-wide inventory of all possible leaking equipment, the regular monitoring of that equipment to identify leaks, and the repair of leaks as soon as they are identified.

49. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard or any applicable National Emission Standard for a Hazardous Air Pollutant, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring before January 31, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and before March 15, 2004; up to $32,500 for each such violation occurring on or after March 15, 2004 and before

January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

Other Clean Air Act Requirements

50. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the maintenance, implementation and enforcement of NAAQS. Under Section 110(a)(2) of the CAA, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution, including stationary sources in attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

51. EPA subsequently approved and made federally enforceable the SIPs for the states of Delaware, South Carolina, Tennessee, Texas and Virginia. See 40 C.F.R. Part 52, Subpart I; 40 C.F.R. Part 52, Subpart PP; 40 C.F.R. Part 52, Subpart RR; 40 C.F.R. Part 52, Subpart SS; 40 C.F.R. Part 52, Subpart VV.

52. A violation of a federally enforceable SIP requirement is a violation of Section 110 of the Clean Air Act, 42 U.S.C. § 7410.

53. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" for compliance with the CAA, including PSD, NNSR and NSPS requirements, are collected in one place.

54. Delaware Title V - The State of Delaware's Title V program was granted full approval in 2001. Delaware's Title V permit program is currently codified in Title 7

(Conservation), Chapter 60, Subchapter VIII. Clean Air Act Title V Operating Permit Program.

55. North Carolina Title V - North Carolina's Title V operating permit program was granted final approval by EPA on October 1, 2001. North Carolina's Title V Program is currently codified in Title 15A, Subchapter 2Q of the North Carolina Administrative Code.

56. South Carolina Title V - South Carolina's Title V operating permit program was granted final approval by EPA on June 26, 1995. South Carolina's Title V operating permit program is currently codified in the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et seq. (Revised 2008), as implemented by 24A S.C. Code Ann. Regulation 61-62.70 (Cum. Supp. 2008).

57. Chattanooga Title V - Chattanooga-Hamilton County Air Pollution Control Bureau's Title V permit was approved by EPA on April 25, 1996, at 61 Fed. Reg. 13101.

58. Texas Title V - Texas's title V operating permit program was approved on December 6, 2001 at 66 Fed. Reg. 63318 and has been amended several times since then.

59. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and the Title V operating permit programs identified in Paragraphs 52-56 above have at all relevant times made it unlawful to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

60. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), implementing regulations of the CAA, 40 C.F.R. § 70.2, and the Title V operating permit program regulations identified in Paragraphs 52-56 above have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and standards as are necessary to assure compliance with applicable requirements of the CAA and the requirements of the applicable SIP,

including any PSD requirement to comply with an emission rate that meets BACT and any NNSR requirement to comply with an emission rate that meets LAER, and any applicable NSPS requirement.

61. Section 112 of the CAA, 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Parts 61 and 63 provide emissions requirements for owners and operators of major stationary sources that emit hazardous air pollutants.

62. Section 114 of the CAA, 42 U.S.C. § 7414, and the implementing regulations thereto, establishes the authority of the Administrator or an authorized representative to require any person who may have information necessary for the purposes of CAA Section 114 or who is subject to a requirement of the CAA, except for certain specified provisions, to require production of records, an inspection, monitoring and/or entry.

63. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection") implements the Montreal Protocol on Substances that deplete the Ozone Layer, and mandates, the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as Class I and Class II substances.

64. Section 603 of the CAA, 42 U.S.C. § 7671b, and the implementing regulations, establishes reporting and monitoring requirements for each person who produces, imports or exports Class I and Class II substances which are identified in Section 602 of the CAA, 42 U.S.C. § 7671a.

65. Section 608 of Subchapter VI, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program") requires that the EPA promulgate regulations establishing

standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

66. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

67. Section 608 of the CAA states, "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment." 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

68. The Subpart F Regulations contain leak repair requirements for industrial process equipment containing more than fifty (50) pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

69. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that:

> Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which the notice of violation is issued, the

Administrator may . . . bring a civil action in accordance with subsection (b) of this section.

70. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that:

"Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued or approved under those provisions or subchapters . . .the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . ."

71. Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator and a State to initiate a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day of violation for violations occurring before January 30, 1997; up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004; up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan.

72. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the Administrator and a State to initiate a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

73. Section 167 of the CAA, 42 U.S.C. § 7477, authorizes the Administrator and a State to initiate an action for injunctive relief, as necessary, to prevent the construction, modification, or operation of a major emitting facility which does not conform to PSD requirements.

CLEAN WATER ACT

74. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

75. Section 301(a) of the CWA, 33 U.S.C. § 1251(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person except in compliance with, inter alia, a National Pollutant Discharge Elimination ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

76. EPA or an authorized state, in issuing NPDES permits, shall prescribe conditions for such permits as the permitting authority determines are necessary to carry out the provisions of the CWA. 33 U.S.C. § 1342(a).

77. Each NPDES permit includes effluent limitations which are applicable to outfalls which discharge pollutants from a permitted facility. Failure to comply with the effluent limits and other requirements of an NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

78. "Effluent limitation" means any restriction imposed by the permitting authority on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States. . . ." 40 C.F.R. § 122.2.

79. "Discharge of a pollutant" includes "any addition of any pollutant to navigable waters from any point source." CWA § 502(12), 33 U.S.C. § 1362(12).

80. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water." CWA § 502(6), 33 U.S.C. § 1362(6).

81. "Navigable water" is defined as the "waters of the United States," and includes lakes, rivers, and streams. CWA § 502(7), 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

82. "Point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, . . . conduit, . . . [or] container . . . , from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.

83. "Person" is defined as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." CWA § 502(5), 33 U.S.C. § 1362(5).

84. Pursuant to CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), EPA promulgated Spill Prevention Control and Countermeasure Plan ("SPCC Plan") regulations, codified at 40 C.F.R. Part 112, which establish requirements for procedures, methods and equipment to prevent discharges of oil from onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

85. The SPCC Plan regulations in 40 C.F.R. Part 112 are applicable to owners or operators of non-transportation related onshore facilities engaged in storing or consuming oil when the facility has an above-ground storage capacity of no less than 1320 gallons of oil or in a single container of more than 660 gallons of oil, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities as defined in 40 C.F.R. Part 110.

86. Under the SPCC Plan regulations, 40 C.F.R. § 112.3, the owner or operator of an onshore facility that has discharged or, due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC plan in writing within six months after the date that such facility begins operations. The Plan must be in accordance with the requirements and guidelines set forth in the SPCC Plan regulations at 40 C.F.R. § 112.7.

87. Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. §§ 19.2 and 19.4 (Table),

provides that any person who fails or refuses to comply with any regulation issued pursuant to CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), shall be subject to a civil penalty in an amount up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

88. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and its implementing regulations found at 40 C.F.R. Part 370, requires each facility subject to the EPCRA Section 302 requirements to notify the State Emergency Response Commission ("SERC") for the State where the facility is located that the facility is subject to EPCRA Section 302 requirements if a substance exceeds the threshold planning quantity, or if there is a revision to such a list within 60 days after either such substance is acquired at the facility or when the list is revised.

89. Section 304 of EPCRA, 42 U.S.C. § 11004, and its implementing regulations found at 40 C.F.R. Part 370, requires the owner or operator of a facility at which an extremely hazardous substance is released to immediately provide notice to any Local Emergency Planning Committee ("LEPC") and the SERC in the area likely to be affected by the release. With respect to transportation, the owner or operator shall call 911, or the operator in the absence of 911, upon the release of an extremely hazardous substance. The notice must meet the requirements must include the information specified in Section 304(b)(2) of EPCRA, 42 U.S.C. § 11004(b)(2).

90. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations

found at 40 C.F.R. Part 370, requires the owner or operator of any facility which is required to prepare or have available a material safety data sheet ("MSDS") for each hazardous chemical listed under the Occupational Safety and Health Act ("OSH Act") of 1970, 29 U.S.C. § 651 et seq., and regulations promulgated under that Act, to submit the MSDS (or in the alternative a list of chemicals) to the LEPC, the SERC, and also the fire department with jurisdiction over the facility, by October 17, 1987, or within three months of first becoming subject to the requirements of EPCRA § 311, 42 U.S.C. § 11021.

91. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to have a MSDS for a hazardous chemical under the OSH Act of 1970, 29 U.S.C. § 651 et. seq., and regulations promulgated under that Act, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II, as described in 40 C.F.R. Part 370) containing the information required by those sections to the LEPC, SERC, and also the fire department with jurisdiction over the facility, by March 1, 1988 or March 1 of the first year after the facility first becomes subject to the requirements of EPCRA § 312, 42 U.S.C. § 11022, and annually thereafter.

92. Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility to complete a toxic chemical release form for each toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) during the preceding calendar year at the facility.

93. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended by the Federal

Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. §§ 19.2 and 19.4 (Table), provides that any person who violates any requirement of EPCRA § 312, 42 U.S.C. § 11022, shall be liable to the United States for a civil penalty in an amount up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

RESOURCE CONSERVATION AND RECOVERY ACT

94. RCRA and its amendments establish a comprehensive regulatory program for generators of hazardous waste and for the management of facilities that treat, store, or dispose of hazardous waste. Pursuant to the authority granted by RCRA, EPA has promulgated regulations applicable to such generators and hazardous waste management facilities, codified at 40 C.F.R. Parts 260-271.

95. RCRA's Subchapter III (RCRA §§ 3001 - 3023, 42 U.S.C. §§ 6921 - 6940) (also known as "Subtitle C") requires EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store and dispose of hazardous wastes.

96. Section 3002 of RCRA, 42 U.S.C. § 6922, directs the Administrator to promulgate regulations establishing standards applicable to generators of hazardous waste. These regulations are codified at 40 C.F.R. Part 262.

97. Section 3004 of RCRA, 42 U.S.C. § 6924, directs the Administrator to

promulgate regulations establishing standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. These regulations are codified at 40 C.F.R. Part 265.

98. RCRA and its implementing regulations provide for government regulation of hazardous waste management facilities primarily through a permitting process. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires each person owning or operating a hazardous waste treatment, storage or disposal facility to have a permit and prohibits the treatment, storage or disposal of hazardous waste except in accordance with a permit.

99. Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), provides that a hazardous waste facility that was in existence on November 19, 1980, may obtain "interim status," and treatment, storage, or disposal of hazardous waste at the facility may continue until EPA takes final action with respect to the facility's permit application, as long as the facility satisfies specified conditions. These conditions include filing a timely notice under Section 3010 of RCRA, 42 U.S.C. § 6930, and filing an application for a hazardous waste permit.

100. Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), provides that EPA must carry out new requirements promulgated pursuant to the HSWA until such time as the State is authorized to carry out such program. The requirements established by the HSWA are effective in all states regardless of their authorization status and are implemented by EPA until a State is granted final authorization with respect to these requirements.

101. Under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, any State may apply for and receive authorization to enforce its own hazardous waste management program in lieu of the federal hazardous waste management program, provided the

state requirements are consistent with and equivalent to the federal requirements. To the extent that the State hazardous waste program is authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of the State program are effective in lieu of the federal hazardous waste management program set forth in 40 C.F.R. Part 260. EPA retains independent authority to enforce requirements established pursuant to RCRA regardless of whether a state has been authorized to carry out such program.

102. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the United States retains jurisdiction and authority to initiate an independent enforcement action to address any violations of the requirements of an authorized State program.

103. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that when any person has violated or is in violation of any requirement of RCRA, including provisions of a federally-approved state hazardous waste management program, the Administrator of EPA and a State may commence a civil action in U.S. District Court for appropriate relief, including a temporary or permanent injunction.

104. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), provides that any person who violates a requirement of RCRA shall be liable for a civil penalty of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

105. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), whenever the Administrator determines that there has been a release of hazardous waste into the environment from a facility that has interim status, that once had interim status, or that should have had interim status, the Administrator may commence a civil action for appropriate relief, including an injunction requiring the defendant to take corrective action necessary to protect human health and the environment.

106. The states of Delaware, North Carolina, South Carolina, Georgia, Texas, and Virginia have corrective action programs.

Relevant State RCRA Programs

107. Delaware - On June 8, 1984, EPA authorized the State of Delaware to administer and enforce a hazardous waste program in lieu of the federal hazardous waste management program established under Subchapter III of RCRA, 42 U.S.C. §§ 6921-6935, 40 C.F.R. § 272.401. Subsequent program revisions were approved on August 8, 1996, August 18, 1998, July 12, 2000, and August 8, 2002. 67 Fed. Reg. 51478 (Aug. 8, 2002). The authorized Delaware hazardous waste regulations were incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. § 6921, et. seq. 40 C.F.R. § 272.401. The State of Delaware's hazardous waste regulations are set forth in 7 Delaware Code Annotated §§ 6301 through 6317.

108. Georgia - Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. The State of Georgia's hazardous waste regulations are set forth in Title 12, Chapter 8, Article 3 of the Georgia Code.

109. North Carolina - North Carolina initially received final authorization for its base

RCRA program on December 14, 1984. The State of North Carolina's hazardous waste regulations are set forth chapter 15 of the North Carolina Administrative Code.

110. South Carolina - South Carolina initially received final authorization for its base RCRA program effective on November 22, 1985. South Carolina's Hazardous Waste Management Act is set forth in Title 44 Chapter 56 of the South Carolina Code, as implemented by 25 S.C. Ann. 61-79 (Cum Supp. 2008).

111. Texas - On December 26, 1984, EPA authorized the State of Texas to administer and enforce a hazardous waste program in lieu of the federal hazardous waste management program established under Subchapter III of RCRA, 42 U.S.C. §§ 6921-6935, 40 C.F.R. § 272.2201. The State of Texas's hazardous waste regulations are set forth in Chapter 361 of the Texas Solid Waste Disposal Act. The authorized Texas hazardous waste regulations were incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. § 6921, et. seq. 40 C.F.R. § 272.2201.

112. Virginia - Virginia received final authorization to implement its hazardous waste management program effective December 18, 1984. The State of Virginia's hazardous waste regulations are set forth in Virginia Administrative Code 9 VAC 20-60-263 and 9 VAC 20-60-420 through 9 VAC 20-60-500.

113. At all times relevant to the violations alleged in this Complaint, the States of North Carolina, South Carolina, Virginia, Texas, Georgia, and Delaware have been authorized to issue permits and to administer their own hazardous waste programs.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

114. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the "reportable quantity").

115. Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), provides that any person who violates the provisions of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), shall be liable to the United States for civil penalties of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)

116. FIFRA establishes a comprehensive scheme for regulating the distribution, use and sale of pesticides.

117. Section 12(A)(2)(g) of FIFRA, 7 U.S.C. § 136j, makes it unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

118. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), provides that any person who violates of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), shall be liable to the United States for civil penalties of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such

violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

SAFE DRINKING WATER ACT (SDWA)

119. In 1976, Congress enacted the SDWA to protect the nation's drinking water sources.

120. Section 1412(c) of the SDWA, 42 U.S.C. § 300-g-1(c) and the regulations promulgated by EPA thereunder establish national secondary drinking water standards.

121. Section 1414 of the SDWA, 42 U.S.C. § 300g-3(b), authorizes the Administrator to commence a civil action to require compliance with any applicable requirement of Section 1412(c) of the SDWA, and any person in violation of such requirement is liable to the United States for a civil penalty, as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

122. Part C of the SDWA, 42 U.S.C. § 300h et. seq., was enacted to prevent contamination of underground sources of drinking water.

123. Section 1421 of the SDWA, 42 U.S.C. § 300h, directs the Administrator of EPA to regulate underground injection control programs by establishing requirements to prevent contamination of underground sources of drinking water through wells.

124. Sections 1423(a)(2) and 1423(b) of the SDWA, 42 U.S.C. §§ 300h-2(a)(2) and 300-h-2(b), authorize the Administrator to commence a civil action "for the appropriate relief as protection of public health may require," when any person has violated or is in violation of any requirement of the underground injection control program.

125. Pursuant to Section 1423(b) of the SDWA, 42 U.S.C. §§ 300h-2(b), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), any person in violation of Section 1421 of the SDWA is liable to the United States for a civil penalty of up to $25,000 per day of violation for violations occurring before January 30, 1997, up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, up to $32,500 for each such violation occurring on or after March 15, 2004 and before January 19, 2009; and up to $37,500 for each such violation occurring on or after January 19, 2009.

FIRST CLAIM FOR RELIEF
(CAA PSD/NNSR Violations at Covered Facilities)

126. Paragraphs 1 though 125 are re-alleged and incorporated by reference as is fully set forth herein.

127. INVISTA owns and operates the facilities at Seaford, Delaware, Camden, South Carolina, Chattanooga, Tennessee, and Victoria, Texas.

128. At all times pertinent to this civil action, the Seaford Facility was a "major stationary source," within the meaning of the Act for SO_2, NO_x and PM for purposes of PSD and NNSR.

129. At all times pertinent to this civil action, the Camden Facility and the Chattanooga

Facility were a "major stationary source," within the meaning of the Act for SO_2, and NO_x for purposes of PSD.

130. At all times pertinent to this civil action, the Victoria Facility was a "major stationary source," within the meaning of the Act for NO_x for purposes of PSD.

131. INVISTA has modified emissions units at its facilities at Seaford, Delaware, Camden, South Carolina, Chattanooga, Tennessee, and Victoria, Texas as set forth in Appendix B to this Complaint.

132. Each modification specified in Appendix B at the Seaford, Camden, Chattanooga, and Victoria Facilities was a "major modification" within the meaning of 40 C.F.R. § 52.21(b)(2), for PSD violations, or of 40 C.F.R. § 52.24(b)(2), for NNSR violations, to existing major stationary sources that resulted in a significant net emissions increase of: NO_x, SO_2, and/or PM from the Facility.

133. Since the major modifications of the Facilities, as identified in Appendix B, the Seaford, Camden, Chattanooga, and Victoria Facilities have been in violation of Sections 165(a), 502(a) and 504(a) of the CAA, 42 U.S.C. §§ 7475(a), 7661a(a), 7661c(a), the implementing regulations at 40 C.F.R. §§ 52.21, 52.24, and Part 70, and the Delaware, South Carolina, Tennessee, and Texas SIPs, by (1) failing to undergo PSD or NNSR review, (2) failing to obtain proper or adequate PSD, NNSR, or Title V permits, and (3) failing to install BACT or LAER technology for the control of those pollutants for which a significant net emissions increase occurred.

134. Unless restrained by an Order of the Court, these violations of the Clean Air Act and the implementing regulations will continue.

135. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), INVISTA is subject to injunctive relief and civil penalties up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

SECOND CLAIM FOR RELIEF
(CAA/NSPS Violation at Flaring Device)

136. The allegations in Paragraphs 1 through 135 are hereby re-alleged and incorporated by reference as if fully set forth herein.

137. INVISTA is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of the start-up flaring device located at the Orange Facility.

138. The start-up flare at Orange is a "fuel gas combustion device" as defined in 40 C.F.R. § 60.101(g), and a stationary source as "stationary sources" is defined in Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

139. The flaring device is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a new source as "new sources" is defined in Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

140. The start-up flare at Orange is subject to the emission limitations set forth in 40 C.F.R. § 60.18.

141. INVISTA's operation of the start-up flare fails to meet the emissions requirements under 40 C.F.R. § 60.18.

142. Unless restrained by an order of the Court, this violation of the CAA and the implementing regulations will continue.

143. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject INVISTA to injunctive relief and civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

THIRD CLAIM FOR RELIEF
(Benzene Waste NESHAP)

144. The allegations in Paragraphs 1 through 143 are hereby re-alleged and incorporated by reference as if fully set forth herein.

145. The Victoria Facility and the Orange Facility have Total Annual Benzene ("TAB") wastes of over 10 megagrams per year ("mg/yr"), and have been subject to the requirements of the Benzene Waste NESHAP set forth at 40 C.F.R. § 61, Subpart FF. At all times relevant to this Complaint, INVISTA has asserted that the TAB at the LaPorte Facility is less than 10 mg/yr, and is not subject to the control requirements of 40 C.F.R. § 61, Subpart FF.

146. The Victoria Facility and the Orange Facility have failed to comply with the requirements of the Benzene Waste NESHAP regulations and the CAA as specified in Appendix

C. The LaPorte Facility has failed to comply with the requirements of the Benzene Waste NESHAP that are applicable to facilities with a TAB of less than 10 mg/yr as specified in Appendix A.

147. Unless restrained by an order of the Court, these violations of the CAA and its implementing regulations will continue.

148. As provided in Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477, the violations set forth above subject INVISTA to injunctive relief and civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

FOURTH CLAIM FOR RELIEF
(Leak Detection and Repair Requirements)

149. The allegations in Paragraphs 1 through 148 are re-alleged and incorporated by reference as if fully set forth herein.

150. INVISTA has failed to accurately monitor the valves and other components, to report the valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner at the Victoria and Orange Facilities as identified in Appendix C.

151. INVISTA's acts or omissions referred to in the preceding Paragraphs constitute violations of 40 C.F.R. Part 60, Subparts Kb, VV and KKK; 40 C.F.R. Part 61, Subparts J,

Kb,and V; and 40 C.F.R. Part 63, Subparts F, G, and H, as specified in Appendix C.

152. Unless restrained by an order of the Court, these violations of the CAA and its implementing regulations will continue.

153. As provided in Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477, the violations set forth above subject INVISTA to injunctive relief and civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

FIFTH CLAIM FOR RELIEF
(Other Violations of Clean Air Act)

154. The allegations of paragraphs 1 through 152 above are realleged and fully incorporated herein by reference.

155. INVISTA violated and continues to violate the applicable SIP provisions for the Camden, Chattanooga, Seaford, Waynesboro, LaPorte, Sabine and Victoria Facilities as identified in Appendices A and B.

156. INVISTA violated its applicable Title V requirements, its Title V permits and/or the requirements of CAA § 502 at the Camden, Chattanooga, Seaford, LaPorte, Sabine, Victoria and Kinston Facilities as identified in Appendix A.

157. INVISTA violated Section 112 of the Clean Air Act by failing to meet the regulatory requirements for emissions of hazardous air pollutants at the Camden, Seaford, Waynesboro, LaPorte, Sabine, and Victoria Facilities as identified in Appendix A.

158. INVISTA violated Section 113 of the Clean Air Act by failing to meet the requirements for emissions in Section 113 and its implementing regulations at the Waynesboro, LaPorte, Sabine, and Victoria Facilities.

159. INVISTA violated Section 114 of the Clean Air Act by failing to meet the requirements for producing information in Section 114 and its implementing regulations at the Victoria Facility.

160. INVISTA violated Section 603 of the Clean Air Act by failing to monitor and/or report Class I or Class II substances in accordance with the requirements of Section 603 and the implementing regulations at the Chattanooga, Seaford, Waynesboro, LaPorte, Orange, and Victoria Facilities as identified in Appendix A.

161. INVISTA violated Section 608 of the Clean Air Act by failing to comply with the use and disposal requirements established in Section 608 and its implementing regulations at the Camden, Seaford, LaPorte, and Orange Facilities as identified in Appendix A.

162. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject INVISTA to injunctive relief and civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

SIXTH CLAIM FOR RELIEF
(Violation of the Clean Water Act)

163. The allegations of paragraphs 1 through 162 above are realleged and fully

incorporated herein by reference.

164. INVISTA is engaged in storing or consuming oil or oil products for backup generators located at the Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities in "harmful quantities," as defined by 40 C.F.R. §110.3.

165. INVISTA's Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities are onshore facilities within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. §1321(a)(10), and 40 C.F.R. Part 112, which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

166. Based on the above, and pursuant to Section 311(j)(1)(C) of the CWA and its implementing regulations, INVISTA is subject to the Oil Pollution Prevention requirements of 40 C.F.R. Part 112.

167. INVISTA has violated the CWA as specified in Appendix A at the Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities by failing to appropriately prepare and implement a SPCC Plan, as required by Section 311(j)(1)(C) of the CWA, 33 U.S.C. §1321(j)(1)(C), and the regulations found at 40 C.F.R. §112.3 through §112.7.

168. INVISTA has been granted NPDES permits by the relevant states which allow for the discharge of process and sanitary wastewater in accordance with its terms at its Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities. The permits identify the outfalls that INVISTA may use for such discharge and the types and amounts of pollutants that may be lawfully discharged.

169. INVISTA has violated the requirements of its NPDES permit or the Facilities' NPDES permit and/or stormwater requirements in violation of Sections 301 and 402 of the CWA at its Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities as identified in Appendix A.

170. Pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319, 1321, the above violations subject INVISTA to penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

SEVENTH CLAIM FOR RELIEF
(EPCRA Violations)

171. The allegations of paragraphs 1 through 170 above are realleged and fully incorporated herein by reference.

172. At all times pertinent to this complaint, INVISTA's Athens and Seaford Facilities have had extremely hazardous substances in an amount in excess of the threshold planning quantity established pursuant to EPCRA §§ 302(a)(2), (b), 42 U.S.C. § 11002(a)(2), (b).

173. INVISTA has violated Section 302(c) of EPCRA, 42 U.S.C. § 11002(c),and the regulations found at 40 C.F.R. Part 370 by failing to provide the notice required under this Section to the State emergency response commission at its Athens and Seaford Facilities as identified in Appendix A.

174. Each of the INVISTA Facilities is a "facility" at which "hazardous chemicals" are produced, used, or stored, within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b).

175. INVISTA has violated Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations found at 40 C.F.R. Part 370 by failing to provide immediate notice to the LEPC and/or the SERC after the release of an extremely hazardous substance at its Camden, Chattanooga, and Waynesboro Facility as identified in Appendix A.

176. INVISTA's Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Martinsville, Orange, Seaford, Victoria, and Waynesboro Facilities are required to prepare or have a material safety data sheet for a hazardous chemical under the OSH Act of 1970 and the regulations promulgated under that Act.

177. INVISTA has violated Section 311 of EPCRA, 42 U.S.C. § 11021, and the regulations found at 40 C.F.R. Part 370 by failing to prepare or have an MSDS for each hazardous chemical listed under the OSH Act of 1970 and the regulations promulgated under that Act, and submit the MSDS to the LEPC, the SERC, and the fire department with jurisdiction over the facility within three months of becoming subject to the requirements of EPCRA Section 311 at its Martinsville Facility, as identified in Appendix A.

178. INVISTA has violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the

regulations found at 40 C.F.R. Part 370 by failing to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II, as described in 40 C.F.R. Part 370) containing the information required by those sections to the LEPC, SERC, and the fire department with jurisdiction over the facility by March 1, 1988 (or March 1 of the first year after the facility first becomes subject to the requirements of EPCRA Section 312), and annually thereafter at its Athens, Calhoun, Camden, Chattanooga, Kinston, LaPorte, Orange, Seaford, Victoria, and Waynesboro Facilities, as identified in Appendix A.

179. INVISTA has violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations found at 40 C.F.R. Part 370, by failing to complete a toxic chemical release form for each toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) during the preceding calendar year at the Camden, Chattanooga, Kinston, LaPorte, Orange, Seaford, Victoria and Waynesboro Facilities, as identified in Appendix A.

180. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the violations above subject INVISTA to civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

EIGHTH CLAIM FOR RELIEF
(RCRA Violations)

181. Paragraphs 1 through 180 are re-alleged and incorporated by reference as if fully set forth herein.

182. At all times relevant to the violations alleged in this Complaint, INVISTA is the "owner" and "operator" of the Acquired Facilities, within the meaning of 40 C.F.R. § 260.10 and the applicable state laws and regulations.

183. INVISTA is a "generator" of hazardous waste within the meaning of 40 C.F.R. § 260.10 and applicable state laws and regulations at the Acquired Facilities.

184. As relative to this Complaint, INVISTA generates RCRA-regulated hazardous wastes at its Acquired Facilities.

185. INVISTA has violated Section 3002 of RCRA, 42 U.S.C. § 6922, the applicable regulations at 40 C.F.R. Part 262 and the applicable state regulations establishing standards applicable to generators of hazardous waste at INVISTA's Athens, Calhoun, Camden, Chattanooga, Dalton, Martinsville, Seaford, Waynesboro, LaPorte, Orange, and Victoria Facilities as identified in Appendix A.

186. INVISTA has violated Section 3004 of RCRA, 42 U.S.C. § 6924, the applicable regulations at 40 C.F.R. Part 265 and the applicable state regulations which establish requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities at its Athens, Calhoun, Camden, Chattanooga, Dalton, Martinsville, Seaford, Waynesboro, LaPorte and Orange Facilities, as identified in Appendix A.

187. INVISTA has violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the applicable federal and state regulations promulgated under this Section which establish permit application requirements for owners and operators of hazardous waste treatment, storage, and

disposal facilities at its Athens, Orange, and Victoria Facilities, as identified in Appendix A.

188. INVISTA has violated Section 3006 of RCRA, 42 U.S.C. § 6926, and the applicable federal and state regulations promulgated under this Section at its Orange Facility, as identified in Appendix A.

189. INVISTA has violated Section 3008 of RCRA, 42 U.S.C. § 6928, and the applicable federal and state regulations promulgated under this Section at its LaPorte Facility, as identified in Appendix A.

190. INVISTA has violated Section 3010 of RCRA, 42 U.S.C. § 6930, and the applicable federal and state regulations promulgated under this Section at its LaPorte Facility, as identified in Appendix A.

191. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, the violations above subject INVISTA to civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

NINTH CLAIM FOR RELIEF
(CERCLA Violations)

192. Paragraphs 1 through 191 are re-alleged and incorporated by reference as if fully set forth herein.

193. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance

from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the "reportable quantity").

194. INVISTA is "in charge of" the Waynesboro, Chattanooga, and Camden Facilities, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

195. INVISTA has failed to immediately notify the National Response Center of releases from the Waynesboro, Chattanooga, and Camden Facilities of hazardous substances in an amount equal to or greater than the reportable quantity for those substances, as specified in Appendix A.

196. The acts or omissions referred to in the preceding paragraph constitute violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603.

197. Pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), the violations above subject INVISTA to civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

TENTH CLAIM FOR RELIEF
(FIFRA Violations)

198. Paragraphs 1 through 194 are re-alleged and incorporated by reference as if fully set forth herein.

199. INVISTA has violated Section 12(A)(2)(g) of FIFRA, 7 U.S.C. § 136j by using a registered pesticide in a manner inconsistent with its labeling at its Athens, Camden,

Chattanooga, LaPorte, Orange, Seaford, and Waynesboro Facilities, as specified in Appendix A.

200. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136*l*, the violations above subject INVISTA to civil penalties of up to $1,000 per day for each violation occurring on or before January 30, 1997; $1,00 per day for each violation occurring between January 31, 1997 and March 15, 2004; $1,100 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $1,100 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

ELEVENTH CLAIM FOR RELIEF
(SDWA Violations)

201. Paragraphs 1 through 200 are re-alleged and incorporated by reference as if fully set forth herein.

202. INVISTA has violated Section 1412(c) of the SDWA by failing to meet the secondary treatment standards at its Camden Facility, as specified in Appendix A.

203. INVISTA has violated Section 1423 of the SDWA by failing to meet the requirements for underground injection at its Camden Facility, as specified in Appendix A.

204. Pursuant to Sections 1414 and 1423 of SDWA, 42 U.S.C. §§ 1414, 1423, the violations above subject INVISTA to civil penalties of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,500 per day for each violation occurring between January 31, 1997 and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (as amended).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States and SCDHEC, respectfully request that this Court:

1. Order INVISTA to immediately comply with the statutory and regulatory requirements cited in this Complaint;

2. Order INVISTA to take appropriate measures to mitigate the effects of its violations;

3. Assess civil penalties against INVISTA for up to the maximum amounts provided in the applicable statutes; and

4. Grant the United States and SCDHEC such other relief as this Court deems just and proper.

Respectfully submitted,
FOR THE UNITED STATES OF AMERICA

Date: April 8, 2009

JOHN C. CRUDEN
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Date: April 13, 2009

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FOR THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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